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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 10/601,796 | 06/23/2003 | Morris Samelson | P-5435(DIV1) | 7988 |
| 7590 | 02/23/2007 | | EXAMINER | |
| GUNN & LEE, P.C., 700 N. ST. MARY'S STREET, STE.1500 SAN ANTONIO, TX 78205 | | | CHANNAVAJJALA, LAKSHMI SARADA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1615 | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 02/23/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/601,796 | SAMELSON ET AL. | |
| | Examiner | Art Unit | |
| | Lakshmi S. Channavajjala | 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 January 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,11,16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,11,16 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Receipt of amendment, response, declarations and RCE dated 1-16-07 is acknowledged.

Claims 3-10, 12-15 and 17 have been canceled. Claims 1, 2, 11, 16 and 18 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-13-06 has been entered.

Instant claims 1, 2, 11, 16 and 18 are directed to a composition consisting of a mixture of at least 50% by weight of processed Dead Sea mineral particles suspended in a continuous all-natural carrier medium, consisting of oil and at least one essential oil. According to the instant claims the carrier medium consists of oil and at least one essential oil, thus allowing for more than one essential oil. Claim 18 is directed to processed Dead Sea minerals, wherein 100% minerals consist of an ultra-fine granularity of less than 1.0 mm.

Response to Arguments

The following objections of record have been withdrawn:

Claim Objections

Objection of claims under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claims in proper dependent form, or rewrite the claims in a dependent form.

Applicant's arguments filed 1-16-07 have been fully considered but not found persuasive.

Claim Rejections - 35 USC § 103

Claims 1, 2, 11, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0211062 to Laden et al (Laden) in view of 5,997,889 to Durr et al ('889).

Laden teaches anhydrous skin cleansers comprising emollient oils (0021), emulsifying agents (0030-0032), substantially crystalline abrasive materials (0033-0036) and other additives such as tocopherol, fragrances etc. Laden teaches that the crystalline abrasive material is used at a concentration of 1-60% (0014), to provide sufficient abrasive effect in the removal of soils, without irritating or scratching of the skin. For the amounts of individual ingredients, Laden teaches 1-60% crystalline abrasive material, 30% to 90% emollient oil, 1% to 20% oil-gelling agent, 1% to 15% emulsifying agent (0017) etc. While Laden suggests employing abrasives at a

concentration of 1-60%, and not the claimed "at least 50% of the weight of the composition" absent evidence to the unexpected advantage, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to choose the amount of abrasive material between 1% to 60% and still expect the advantage of skin cleansing without irritation (0033).

Examples 1 and 8 particularly recite Dead Sea salt as an abrasive. With respect to the particle size, Laden suggests that the particle size ranges from 50 to 1000 microns, which includes the claimed particle size of less than 1 mm (claims 16 and 18). Thus, the abrasive particles of Laden meet the claimed size range i.e., 100% particles consisting of an ultra-fine uniform granularity of less than 1.0 mm granularity. For water-immiscible emollient oils, Laden teaches oils that are also claimed in the instant invention. Laden teaches including fragrances in the composition but not essential oils of the instant claims.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of Laden containing Dead sea salts because '889 teaches the ingredients for moisturizing and providing

relief to psoriatic or itchy skin conditions. Therefore, a skilled artisan would have expected to achieve moisturization and also provide immediate relief from skin discomfort.

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR).

KR teaches a cosmetic composition comprising large quantities of salt (15%-85%) such as bay salt, Dead Sea salt or bamboo salt, having a particle size of 0.1mm to 5.00 mm (page 3, 4th full paragraph), oil, surfactant and a polyol (abstract). Further, the particle size of salts taught by KR includes the claimed sizes (instant claims 16 and 18). While KR teaches a range for the particle size that ranges from less than 1 mm to more than 1mm, absent evidence to the unexpected advantage of the claimed particle size i.e., less than 1.0 mm, it would have been obvious for one of an ordinary skill in the art at the time of the instant to choose a particle of Dead Sea salts between 0.01 mm to 5.0 mm in the cosmetic composition of KR and still expect to provide an effective skin scrubbing composition that is pleasant to touch and not irritating skin.

Response to Arguments:

Applicants argue that laden fails to teach a mixture of at least 50% by weight of the total composition of processed Dead Sea salts suspended in a continuous all natural carrier medium consisting of an oil and at least one essential oil or the essential oils of claim 2. Applicants' argument is not persuasive because as already explained in

the final rejection dated 6-30-06, instant rejection is not based on the teachings of Laden alone and instead is based on the teachings of Laden in view of Durr. While Laden teaches only fragrance in the composition, Durr teaches the claimed essential oils as fragrances and their advantage in providing immediate skin relief thus providing the required motivation to include the essential oils in the composition of Laden. Applicants' arguments with respect to the granularity of the Dead Sea particles in the teachings of Laden together with the Declarations submitted on 1-16-07 have been fully considered. Applicants argue that the abrasive particles of Laden do not have the same granularity because even though Laden obtained Dead Sea salts from the same source, the typical composition of the instant invention is different from that of Laden's because the Dead Sea salt works Ltd., offers only two grades of salts (a coarse grade >90% between 5 and 10 mesh and >90% between 1.7 mm and 4.0mm; and a finer grade having 90% less than 10 mesh and 90% less than 1.7 mm. Applicants' arguments are not persuasive because according to the arguments and the provided declaration, the finer grade of Dead sea salts offered by Dead Sea salt works Ltd., has a granularity of 90% particles having less than 1.7 mm. Thus, the less 1.7 mm includes any size below 1.7 mm, including less than the claimed 1.0 mm. instant claims only recite the upper limit of the particle but fails to recite the actual size of the particles. While claim 1 does not mention any particle size, with respect to claim 11, Laden clearly recognizes the importance of particle sizes i.e., abrasion and yet without irritation. In this regard, applicants have not provided any unexpected results with 100% particles having less than 1 mm versus 90% particles less than 1.7 mm. Thus, in the absence of any specific

particle size in the claims together with the absence of any unexpected results with the claimed upper limit, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the particle sizes of Dead Sea salts of Laden so as to achieve abrasive effect and at the same time not produce any skin irritation because Laden teaches while a large particle size is important for removing dirt and dead cells on the skin, the particles should not be too large to scratch or irritate skin.

Applicants' arguments regarding the teaching of "all natural carrier medium" have been considered but not found persuasive. It is argued that in contrast to the instant invention, Laden and KR teaches synthetic oils. However, Durr teaches essential oils as fragrance and for immediate skin relief and thus a skilled artisan would be motivated to employ the essential oils of Durr in the composition of Laden. Further, the rejection of record cites KR reference only for claim 18 and not for claims that require essential oils.

Applicants' argument regarding the problem solved by the instant invention i.e., processing the sea salts to a particular granularity under controlled conditions, such that the salts stay in suspension has been considered. However, as clearly stated in the previous paragraphs, instant claims do not recite a specific particle size other than stating the upper limit. Further, applicants have not provided any comparative data showing unexpected advantage of a particular granularity.

Applicants present the same argument that KR is strictly construed for what is clearly and definitely disclosed. It is argued that KR fails to teach the limitations of claim

1. However, KR has been cited for claim 18, which does not require all the particulars of claim 1 and hence the argument is moot. [W]hen the patented document is used as a patent and not as a publication, the examiner is not restricted to the information conveyed by the patent claims but may use any information provided in the specification which relates to the subject matter of the patented claims when making a rejection (MPEP 2126.02). Therefore the argument that the composition claimed in KR is made up of ultra-fine uniform specific granularity size rather than of dead sea salts minerals mixed of mixed various particle sizes all within the claimed range of KR, is moot. While instant claims do not recite the actual particle size of the salts, the teachings of KR to include Dead Sea salts or Bamboo salts of particle size 0.1 mm to 5.0 mm together with the absence of any data showing unexpected results of the claimed sizes (claimed upper limit and not the actual size) provides the requisite motivation to one of an ordinary skill in the art at the time of the instant invention to choose the appropriate particle size so as to achieve the desired skin scrubbing effect because KR teaches the salts for the scrubbing effect on skin without irritation and with a pleasant effect.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lakshmi S Channavajjala
Examiner
Art Unit 1615

February 17, 2007


LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER